

BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
IN AND FOR THE STATE OF UTAH

**FILED**

APR 10 2003

SECRETARY, BOARD OF  
OIL, GAS & MINING

ooOoo

IN THE MATTER OF THE PETITION	:	NOTICE OF AGENCY ACTION
BY THE DIVISION OF OIL, GAS AND	:	
MINING FOR AN ORDER THAT DAN	:	
POWELL, and EMERY INDUSTRIAL	:	
RESOURCES, INC. CEASE MINING AND	:	DOCKET NO. 2003-004
BE ORDERED TO BEGIN IMMEDIATE	:	CAUSE NO. M/049/021
RECLAMATION OF THE CHERRY HILL	:	
PARK MINE, UTAH COUNTY, UTAH	:	

ooOoo

**RELIEF SOUGHT**

The Division of Oil, Gas and Mining ("Division"), hereby petitions the Board of Oil, Gas and Mining ("Board"), for an Order: (1) withdrawing the existing notice of intention as a result of the operator's expansion of the original small mine operation beyond the 5 acre limits without prior approval by the Division, and the Division's denial of the Notice of Intention to Commence Large Mining Operations due to the failure of the operator to post an adequate bond; (2) requiring that the Respondents cease mining; (3) requiring the mine operator, Emery Industrial Resources ("EIR") and/or Dan Powell to commence immediate reclamation of all pertinent lands affected by the Cherry Hill Park Mine; and (4) providing that in the event required reclamation is not completed by the Operator that the Division shall be authorized to complete the reclamation and to seek recovery of costs and expenses of reclamation from the responsible parties in any appropriate court. The mine is located in portions of the NW 1/4 of Section 36, Township 11 South, Range 8 East, SLBM, Utah County, Utah.

**JURISDICTION**

1. This action is brought by the Division pursuant to the Utah Mined Land Reclamation Act, Utah Code Annotated §§40-8-1 et seq. (2002).
2. Jurisdiction over this matter is conferred upon the Board of Oil, Gas and Mining ("Board") by Utah Code Annotated §40-8-6(2) (2002) which empowers the Board "to hold hearings and to issue orders" as may be necessary to enforce the provisions of the Act.
3. Utah Code Annotated §40-8-16(3)(2002) provides that a Notice of Intention may not be withdrawn until the operator is provided an opportunity for a hearing before the Board.
4. Utah Code Annotated §40-8-9(5)(a)(2002) provides for a public hearing before the Board, for any notice of violation or order of cessation of mining operations.

### **NOTICE REQUIREMENTS**

5. Pursuant to Sections 63-46b-6 to 63-46b-11 of Utah Code Annotated (2002), the hearing will be conducted formally.
6. The hearing will be held on May 28, 2003 at 10:00 a.m. A written response must be filed with the Board within 20 days of the date of mailing. Any party who fails to appear at said hearing may be held in default.
7. The names and addresses of all persons to whom Request for Agency Action shall be given are attached as the CERTIFICATE OF SERVICE and by this reference incorporated herein.

### **STATEMENT OF THE FACTS**

1. On July 8, 1992, Dan L. Powell as owner and as a d/b/a for Emery Industrial Resources, filed a Notice of Intention to Commence Small Mine Operations (Small Mine Notice, Attached as EXHIBIT A).
2. On July 27, 1994, an inspection of the Cherry Hill Park Mine found that the area disturbed by mining operations had exceeded the 5-acre limit for a small mining operation. (See Inspection report, EXHIBIT B)
3. The Division received an original Notice of Intention to Commence Large Mining Operations on November 14, 1994 FILED BY Dan L. Powell agent for Emery Industrial Resources, Inc. (ERI). (Large Mine Notice, EXHIBIT C)
4. Between November 14, 1994 and March 3, 1999 the operator continued mining operations at the Cherry Hill Park mine and the Division negotiated with the operator to complete deficiencies in the Large Mine Notice of Intention.
5. The Operator submitted a revised Notice of Intention to Commence Large mining Operations on March 3, 1999. (EXHIBIT D)
6. One March 12, 2002, the Division had a meeting with the operator to discuss the status of the operation and the response to the outstanding technical deficiencies. The operator agreed to provide a formal response to the Division no later than March 22, 2002. (EXHIBIT E)
7. On May 14, 2002, the Division issued a Notice of Non-Compliance to the operator (via certified mail and faxed), ordering suspension of operations, posting of a reclamation surety in the amount of \$43,500.00 (by June 28, 2002), and submitting a response to the remaining permit deficiencies. (EXHIBIT F)

- 1- 1
8. On January 9, 2003, the Division issued a proposed Agency Action to the operator via personal service on January 14, 2003 by the Utah County Sheriff. (EXHIBIT G).
  9. This proposed Agency Action was based on the operator's failure to abate the May 14, 2002 Notice of Non-Compliance. The proposed Agency Action would require the following:

"that the Division *deny* approval of the Notice of Intention to Commence Large Mining Operations (originally submitted November 14, 1994), and all subsequent modifications and refinements made to the plan since that date. The Division would also withdraw acceptance of the Notice of Intention to Commence Small Mining Operations, submitted July 8, 1992, and would seek an order from the Board of Oil, Gas & Mining requiring the operator to commence reclamation of existing mining-related disturbances according to a schedule determined by the Division."

(EXHIBIT G)
  10. On January 28, 2003, an Informal Conference was held in the Division Office with the operator, to discuss the January 9, 2003 proposed Agency Action.
  11. On February 20, 2003, the Division Director sent written Findings of Fact, Conclusions of Law & Order in response to the January 28, 2003 informal conference. The Order required: 1) EIR to immediately cease all mining operations until written approval has been received from DOGM; 2) DOGM to inspect and file written report on disturbances w/in 10 days; 3) if w/in 30 days EIR has not provided acceptable form and amount of surety, DOGM will initiate an agency action before the Board asking for immediate reclamation and payment of civil penalties. The Operator received this letter on February 26, 2003. (EXHIBIT H)
  12. On March 20, 2003 the Division extended the time to submit the reclamation surety to April 3, 2003, pursuant to the operator's phone request for an extension on March 19, 2003. (EXHIBIT I).
  13. Emery Industrial Resources, Inc. was incorporated in December 22, 1992 and appears to be a currently active corporation. (See Corporate Information, EXHIBIT J)

**COUNT I (Withdrawal of Permit for Inadequate Bonding)**

14. The Division hereby incorporates the allegations of paragraphs 1- 13 hereof and further alleges as follows.
15. Utah Code Annotated §40-8-16(2)(b)(2002) provides for denial of the large mine permit application and withdrawal of the small mining permit for failure to post adequate reclamation surety.
16. The operator was required by Utah Code Annotated §40-8-13(1)(a)(2002) and by Utah Code Annotated §40-8-14(1)(2002) to post an surety in an amount as determined



necessary by the Division *prior* to beginning mining as a large mining operation *in July 1994*.

17. The operator was advised of the need for an adequate bond at the time of the submittal of the Large Mine Notice in November 1994.
18. The operator was given a formal written demand (EXHIBIT F) to post a surety in the amount of \$43,500.00 on June 28, 2002, and since that date has failed to post the surety required.
19. The Division has provided numerous extensions of time to obtain the required surety including two extensions since the informal conference held January 28, 2003.

#### **COUNT II (Withdrawal of Permit for Exceeding the Small Mine Permit)**

20. The Division hereby incorporates the allegations of paragraphs 1- 19 hereof and further alleges as follows.
21. Utah Code Annotated §40-8-16(2)(a)(2002) provides for the withdrawal of the small mining permit for exceeding the small mine limitations without obtaining a mining permit for a large mining operation as required by Utah Code Annotated §40-8-13(1)(a)(2002).
22. The Operator has been advised and has not contested the fact that the operations at the Cherry Hill Park mine have exceeded the small mine limitations and are otherwise not permitted.
23. The operator has been given notice and demand on many occasions and was given formal notice of this violation by the May 14, 2002 Notice of Non-Compliance and Division Directive to Suspend Mining Activities in which the Division advised the Operator that the surveyed area of disturbance was approximately 20.6 acres. (See EXHIBIT G and attached chronology of events).

#### **COUNT III (Cessation of Mining)**

24. The Division hereby incorporates the allegations of paragraphs 1- 23 hereof and further alleges as follows.
25. An order that mining cease in the event of the withdrawal of a notice of intention is required by Utah Code Annotated §40-8-16(4)(2002) which provides:  
“(4) In the event that the division or board withdraws approval of a notice of intention or is revisions, all mining under the notice *shall* be suspended in accordance with procedures and schedule approved by the division.” (emphasis supplied)



26. If the Board finds the operator has exceeded the small mine limitations and has failed to meet the bond and other requirements for a large mine permit and that the notice should be withdrawn, then the Board must order the cessation of mining as provided by statute.
27. Utah code §40-8-9(3)(c)(ii)(2002) provides that in the event of a violation of the Act and failure to abate the violation within the time provided, not to exceed 90 days, the Division "shall immediately order a cessation of mining operations . . . ."
28. The continued nature of the violations has continued in excess of the time provided and the Division has ordered that the mining operations cease.

#### *COUNT IV (Order for Immediate Reclamation)*

29. The Division hereby incorporates the allegations of paragraphs 1- 28 hereof and further alleges as follows.
30. The purposes and intentions of the Act are to insure that mined lands have reclamation plans (see Utah Code §40-8-3(2002)), and requires that "mined lands are reclaimed so as to prevent conditions detrimental to the general safety and welfare of the citizens of the state and provide for the subsequent use of the lands affected." Utah Code §§40-8-2(3)(2002).
31. The Large Mine Notice of Intention as amended and revised contains a reclamation plan for the site which describes in detail the work that the operator was to have bonded and has been determined by the Division as necessary for the site.
32. Utah Code §§40-8-12(2002) requires that reclamation return the land to a stable, ecological condition compatible with the past, present and probable future uses and minimize and prevent future environmental degradation, and prevent future hazard to the public safety and welfare.
33. The reclamation plan prepared for the Division as part of the Large Mine notice accomplishes the objectives of Utah Code §§40-8-12(2002).
34. Utah Code §40-8-9(3)(c)(ii)(2002) which requires cessation of mining operations in the event of failure to abate a violation, further provides that the Division shall determine the remediation required.
35. Failure of the operator to post a bond leaves the State and the Division with a property that is a potential risk to the health and public welfare, and presents a potential liability to the public unless the mined lands are reclaimed.

36. The small mine Notice of Intention filed by Dan L. Powell requires that the mined land be reclaimed upon cessation of mining and obligates the operator to complete the mined reclamation in accordance with the reclamation plans and the Act and its regulations.
37. Minimum requirements for reclamation and revegetation are set forth in the regulations of the Act as set out at R647-4-111 of the Utah Administrative Code (2002).

**COUNT IV (Order for Division to Reclaim and Recover Cost and Expenses of Reclamation)**

38. The Division hereby incorporates the allegations of paragraphs 1- 37 hereof and further alleges as follows.
39. Utah Code §40-8-14(6)(2002) provides that if an operator of a small mining operation fails or refuses to reclaim as required by the statute and regulations, that the Board may order that reclamation be conducted by the Division and that the costs and expenses be recovered in a civil action brought by the attorney general against the operator.
40. The Respondent Dan L. Powell, as signatory to the small mine notice of intention agree to reclaim the site and is the operator under that permit.
41. The Respondent Emery Industrial Resources, Inc. applied as operator of the mining operation and has been the operator during the time that the large mining notice has been under review.

**PRAYER FOR RELIEF**

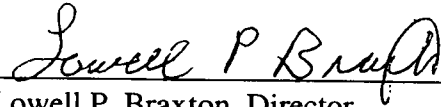
WHEREFORE, the Division requests that the Board enter the following Order(s):

- A. An Order withdrawing the Small Mine Notice of Intention as a result of the operator's expansion of the original small mine operation beyond the 5 acre limits without prior approval by the Division, and the Division's denial of the Notice of Intention to Commence Large Mining Operations due to the failure of the operator to post an adequate bond;
- B. An Order requiring that the Respondents cease mining;
- C. An Order requiring the mine operator, Emery Industrial Resources ("EIR") and/or Dan Powell to commence immediate reclamation of all pertinent lands affected by the Cherry Hill Park Mine;
- D. An Order that in the event the either of the above named operators fail or refuse to commence reclamation or to complete reclamation as required that the Division

shall be authorized to complete the reclamation and to recover all costs and expenses of reclamation from Emery Industrial Resources ("EIR") and/or Dan L. Powell.

- E. Such further relief as the Board may deem just and equitable under the law and facts as may be adduced in the proceeding herein.

Dated this 10<sup>th</sup> day of April, 2003.



Lowell P. Braxton, Director  
Division of Oil, Gas and Mining  
1594 West North Temple, Suite 1210  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801  
Telephone: (801) 538-5340



CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Request for Agency Action for Emery Industrial Resources, Cherry Hill Park Mine, M/049/021, to be mailed by first class mail, postage prepaid, the 10 day of April, 2003 to:

CERTIFIED RETURN RECEIPT

7099 3400 0016 8896 2390

Dan Powell  
262 South 800 West  
Payson, Utah 84651

CERTIFIED RETURN RECEIPT

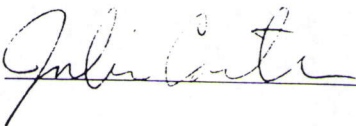
7099 3400 0016 8896 2383

Dan Powell  
As Agent For  
Emery Industrial Resources  
P.O. Box 489  
Price, Utah 84501

Buck Rose  
Utah County Community Development  
100 East Center  
Provo, Utah 84601

E.J. Stokes  
52 South 350 East  
North Salt Lake, Utah 84054

Kurt Seel  
Assistant Attorney General  
Department of Natural Resources  
Board of Oil, Gas and Mining  
160 East 300 South, 5<sup>th</sup> Floor  
P.O. Box 140815  
Salt Lake City, Utah 84114-0815



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# EXHIBIT A



This Section for DOGM Use:

Assigned DOGM File No.: S 10491

DOGM Lead: H. Shepherd

STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
(801) 538-5340  
Fax: (801) 359-3940

RECEIVED

JUL 08 1992

DIVISION OF  
OIL GAS & MINING

NOTICE OF INTENTION TO COMMENCE SMALL MINING OPERATIONS

The informational requirements of this form are based on provisions of the Mined Land Reclamation Act, Title 40-8, Utah Code Annotated 1987, and the General Rules as promulgated under the Utah Minerals Regulatory Program.

"Small Mining Operations" means mining operations which disturb five or less surface acres at any given time.

\*\*\*\*\*

I. GENERAL INFORMATION (Rule R647-3-104)

1. Name of Claim/Mine: Cherry Hill Park
2. Name of Operator/Applicant: Dan L. Powell and Gerald B. Powell  
dba Emery Industrial Resources  
Company ( ) Corporation ( ) Partnership (✓) Individual ( )
3. Permanent Address: P.O. Box 1131  
City: Huntington State: Utah Zip Code: 84528  
Telephone Number: (801) 465-2455
4. Ownership of Land Surface:  
Private (Fee) ☒ Public Domain (BLM) ☐ National Forest (USFS) ☐  
State of Utah ☐ Other: \_\_\_\_\_
5. Ownership of Minerals:  
Private (Fee) ☒ Public Domain (BLM) ☐ National Forest (USFS) ☐  
State of Utah ☐ Other: \_\_\_\_\_

EXHIBIT

A



Utah Mining Claim Number(s): \_\_\_\_\_

Utah State Lease Number(s): \_\_\_\_\_

6. Have the above owners been notified in writing? Yes ☒ No ☐  
If no, why not? \_\_\_\_\_
7. Does the operator have legal right to enter and conduct mining operations on the land covered by this notice? Yes ☒ No ☐

## II. PROJECT LOCATION & MAP (Rule R647-3-105)

1. Project Location (legal description):

County(ies): Utah

SE ~~1/4~~ 1/4, of NW 1/4, of NW 1/4: Section: 36 Township: 1150. Range: 8 E.  
NE 1/4, of NW 1/4, of NW 1/4: Section: 36 Township: 1150. Range: 8 E.  
\_\_\_\_ 1/4, of \_\_\_\_ 1/4, of \_\_\_\_ 1/4: Section: \_\_\_\_\_ Township: \_\_\_\_\_ Range: \_\_\_\_\_

2. A topographic base map showing the location of the proposed small mining operation must be submitted with this notice. A USGS 7.5 minute series map is preferred. The areas to be disturbed should be plotted in sufficient detail so that they can be located on the ground. It is recommended that the operator also plot and label any previous disturbances in the immediate vicinity that he is not responsible for.

## III. OPERATION PLAN (Rule R647-3-106)

1. Type of mining: Surface ☒ Underground ☐
2. Mineral(s) to be mined: Limestone
3. Provide a brief description of the proposed mining operation and onsite processing facilities. Mining Limestone from existing pit and crushing material.

2 pits existing, 1 pit area pre-disturbed,  
1 building (not to be used by operator, some drums  
of grease (belongs to land owner). Operator to photo document pre-existing  
disturbance.

New Road(s): Length \_\_\_\_\_ (ft) Width \_\_\_\_\_ (ft)

Total project surface acreage to be disturbed: 5 (acres)

#### IV. OPERATION AND RECLAMATION PRACTICES (Rule R647-3-107, 108 & 109)

The reclamation and operation obligation is to keep the area clean and safe, minimize hazards to public safety, return the land to a useful condition, and reestablish at least 70 percent of the premining vegetative ground cover. To accomplish this, the operator will need to perform reclamation concurrently, or at the completion (within one (1) year) of mining:

1. Keep the mining operation in a safe, clean, and environmentally stable condition.
2. Permanently seal all shafts and tunnels to prevent unauthorized or accidental entry.
3. Plug drill holes with a five foot cement surface plug. Holes that encounter fluids are to be plugged in the subsurface to prevent aquifer contamination.
4. Construct berms, fences, or barriers, when needed, above highwalls and excavations.
5. Remove, isolate, or neutralize all toxic materials in a manner compatible with federal and state regulations.
6. Remove all waste or debris from stream channels.
7. Dispose of any trash, scrap metal, wood, machinery, and buildings.
8. Conduct mining activities so as to minimize erosion and control sediment.
9. Reclaim all roads that are not part of a permanent transportation system.
10. Stockpile topsoil and suitable overburden prior to mining.
11. Stabilize highwalls by backfilling or rounding to 45 degrees or less, where feasible; reshape the land to near its original contour, and redistribute the topsoil and suitable overburden.
12. Properly prepare seedbed to a depth of six inches by ripping, discing, or harrowing.
13. Reseed disturbed areas with adaptable species. (The Division recommends seeding 20 lbs./acre of native and introduced species of grass, forb, and browse seed, and will provide a specific species list if requested.)
14. Plant the seed with a rangeland or farm drill, or if broadcast seeded, harrow or rake the seed 1/4-1/2 inch into the soil - fall is the preferred time to seed.



V. VARIANCE REQUEST (Rule R647-3-110)Yes ☐ No ☒

Any planned deviations from Rules R647-3-107, Operation Practices, R647-3-108, Hole Plugging Requirements, or R647-3-109, Reclamation Practices, as summarized above, should be identified below and justification given for the variance request(s).

Item Number	Variance Request Justification
R647-3-109(12)	see explanation below (topsoil)
R647-3-109(13)	see explanation below (topsoil) (revegetation)

VI. SIGNATURE REQUIREMENT

I hereby commit to conduct mining operations and to reclaim the aforementioned small mine as required by the Utah Mined Land Reclamation Act (40-8) and the rules as specified by the Board of Oil, Gas and Mining.

Signature of Operator/Applicant:



Name (typed or printed):

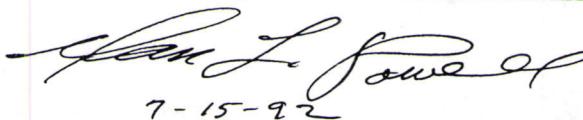
Dan L. Powell

Title/Position (if applicable):

Owner

Date:

7-8-92



7-15-92

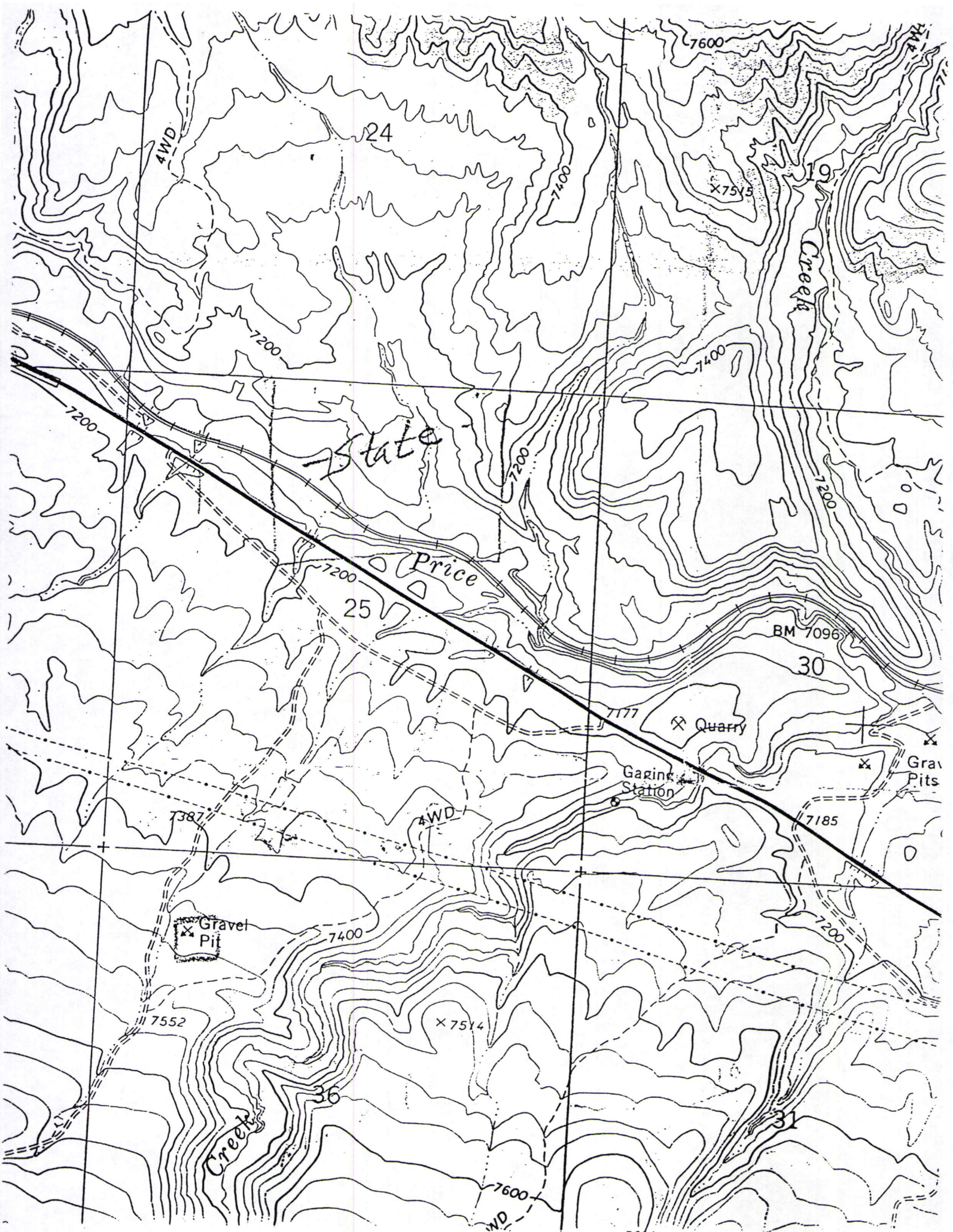
3:MR-SMO

(topsoil) - The site has been pre-disturbed, plus the limestone ore body reaches the ground surface over the majority of the site (Flagstaff Limestone Formation), as a result topsoil will be unavailable for reapplication.

(Revegetation) - Because of the lack of soil material revegetation will not meet the standards. The operator, however, will apply seed to the disturbed area, but not be required to meet the reveg. standard of 70% of current cover.

HKS







# EXHIBIT B



State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt  
Governor

Ted Stewart  
Executive Director

James W. Carter  
Division Director

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
801-538-5340  
801-359-3940 (Fax)  
801-538-5319 (TDD)

August 3, 1994

TO: Minerals File

FROM: Tony Gallegos, Reclamation Engineer *adg*

RE: Site Inspection, Emery Industrial Resources, Cherry Hill Park Mine, S/049/021, Utah County, Utah

Date of Inspection: July 27, 1994  
Time of Inspection: 1010 - 1140  
Conditions: cloudy  
Participants: Dan Powell, Emery Industrial Resources; Tony Gallegos, Lynn Kunzler, DOGM

Purpose of Inspection: To examine the current status of the operation and familiarize new Division staff with the site.

Upon our arrival workers were assembling a crushing/screening system. The system had been moved to the southwest to be closer to the active quarry area. We talked to one of the workers from Nielson Construction. He indicated Dan had not been to the site yet this morning. We then walked around the perimeter of the operation disturbance starting in the southwest corner and going counterclockwise. The mine disturbance had expanded since my last inspection. The quarry area has moved towards the west-southwest. The quarry is currently 7 - 12 feet deep in the active area. The southwest corner of the site appears to have been grubbed and then blasted in preparation of quarrying.

At approximately 1050 Mr. Dan Powell arrived at the site. He presented us with a copy of the 1993 site map. The green border on the map is the area currently covered by a bond with Utah County. The area within the border is approximately 9 acres. The bond with Utah County is \$14,400 (9 x \$1600/acre). Dan estimates the current amount of disturbance at seven acres. He is currently selling product to the power plant near Bonanza, Utah for use in their scrubbers. Dan indicated their operations would not expand to the west beyond the present western border of disturbance.

We discussed the permitting requirements for this operation since the disturbance exceeds five acres. Dan explained his understanding of the Utah County





Page 2  
Site Inspection  
S/049/021  
August 3, 1994

ordinances as once an area is regraded and reseeded the County considers that area fully reclaimed and therefore released from bonding. We explained that the Division requires up to three growing seasons from the time of reseeded before fully releasing an area from reclamation responsibility. Dan asked about the Division's rule of avoiding double bonding. We informed him that we would look into the matter and discuss the situation with our supervisors. The Division may require some additional bonding for this operation due to the difference between Utah County's ordinance and Division Rules regarding "reclamation success." The Division will also need to contact Utah County regarding the bonding situation.

The inspection concluded with the understanding that the Division would send a copy of the inspection memo to Dan. The Division was to provide a tentative seed mix for use in reclaiming this site as an attachment to the memo. The Division was to decide how to handle the permitting requirements for this small mine which has exceeded five acres of disturbance. The Division was to inform Dan of these permitting requirements and provide the appropriate permitting forms. Dan was to provide the Division with a copy of the agreement with Utah County. Photographs were taken to document the current status of the operations.

jb

Attachment: Seed Mix Recommendation  
cc: Dan Powell, Emery Industrial Resources  
Wayne Hedberg, Lowell Braxton, DOGM (route)  
S49-21.mem

# EXHIBIT C

**D E C I V E**

NOV 14 1994

FOR DIVISION USE ONLY

File #: M 10491021

OF OIL, GAS & MINING Date Approved: 1 1

DOGM Lead: LK

**STATE OF UTAH**  
**DEPARTMENT OF NATURAL RESOURCES**  
**DIVISION OF OIL, GAS AND MINING**  
355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
Telephone: (801) 538-5340

**NOTICE OF INTENTION TO COMMENCE LARGE MINING OPERATIONS**

The informational requirements in this form are based on provisions of the Mined Land Reclamation Act, Title 40-8, Utah Code Annotated 1953, General Rules and Rules of Practice and Procedures.

This form applies only to mining operations which disturb or will disturb greater than five acres at any given time.

"MINING OPERATIONS" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining, on-site transportation, concentrating, milling, evaporation, and other primary processing.

"Mining operation" does not include: the extraction of sand, gravel, and rock aggregate; the extraction of oil and gas as defined in Chapter 6, Title 40; the extraction of geothermal steam; smelting or refining operations; off-site operations and transportation; or reconnaissance activities which will not cause significant surface resource disturbance or involve the use of mechanized earth-moving equipment such as bulldozers or backhoes.

**PLEASE NOTE:** If extra space is required to complete a section, please attach additional sheets and include cross-referenced page numbers as necessary. The operator may submit this information on an alternate form, however the same or similar format must be used.





I. GENERAL INFORMATION (Rule R647-4-104)

1. Mine Name: Cherry Hill Park
2. Name of Applicant or Company: Emery Industrial Resources, Inc  
Corporation (☒) Partnership ( ) Individual ( )
3. Permanent Address: 967 So. 680 W.  
Payson, Utah 84651
4. Company Representative (or designated operator):  
Name: Dan L. Powell  
Title: President / Agent  
Address: 967 So. 680 W. Payson, Utah 84651  
Phone: (801) 465-2455
5. Location of Operation:  
County(ies) Utah  
NW 1/4 of NW 1/4, Section: 36 Township: 11 S. Range: 8 E.  
\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4, Section: \_\_\_\_\_ Township: \_\_\_\_\_ Range: \_\_\_\_\_  
\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4, Section: \_\_\_\_\_ Township: \_\_\_\_\_ Range: \_\_\_\_\_
6. Ownership of the land surface (circle which applies): Private (Fee),  
Public Domain (BLM), National Forest (USFS), State of Utah or other:  
Name: E.J. Stokes Address: \_\_\_\_\_  
Name: \_\_\_\_\_ Address: \_\_\_\_\_  
Name: \_\_\_\_\_ Address: \_\_\_\_\_  
Name: \_\_\_\_\_ Address: \_\_\_\_\_
7. Owner(s) of record of the minerals to be mined:  
Name: E.J. Stokes Address: \_\_\_\_\_  
Name: \_\_\_\_\_ Address: \_\_\_\_\_  
Name: \_\_\_\_\_ Address: \_\_\_\_\_  
Name: \_\_\_\_\_ Address: \_\_\_\_\_
8. Have the above owners been notified in writing? Yes ☒ No \_\_\_\_\_  
If no, why not? \_\_\_\_\_

9. Does the operator have legal right to enter and conduct mining operations on the land covered by this notice? Yes ✓ No         .

II. **MAPS, DRAWINGS & PHOTOGRAPHS** (Rule R647-4-105)

1. **Base Map**

A complete and correct topographic base map (or maps) with appropriate contour intervals must be submitted with this notice which show all of the items on the following checklist. The scale should be approximately 1 inch = 2,000 feet (preferably a USGS 7.5 minute series or equivalent topographic map where available) showing the location of lands to be affected in sufficient detail to permit calculation of proposed surface disturbance.

**Map Checklist**

Please check off each section as it is drawn on the map(s). Does the map show:

- (a) Property boundaries of surface ownership of all lands which are to be affected by the mining operations; ✓
- (b) Perennial streams, springs and other bodies of water, roads, buildings, landing strips, electrical transmission lines, water wells, oil and gas pipelines, existing wells or boreholes, or other existing surface or subsurface facilities within 500 feet of the proposed mining operations; ✓
- (c) Proposed route of access to the mining operations from nearest publicly maintained highway (Map scale appropriate to show access); ✓
- (d) Known areas which have been previously impacted by mining or exploration activities within the proposed land affected; ✓
- (e) Acreages proposed to be disturbed or reclaimed each year (or other suitable time period). ✓ (4.0 Acres)

2. **Surface Facilities Map**

A surface facilities map shall be provided at a scale of not less than 1" = 500'.



Map Checklist

Please check off each section as it is drawn on the map. Does the map show:

- (a) Proposed surface facilities, including but not limited to buildings, stationary mining/processing equipment, roads, utilities, power lines, proposed drainage control structures, and the location of topsoil storage areas, overburden/waste dumps, tailings or processed waste facilities, disposal areas for overburden, solid and liquid wastes, and wastewater discharge, treatment and containment facilities; ✓
- (b) A border clearly outlining the extent of the surface disturbed area proposed to be affected by mining, and the number of acres proposed to be affected; ✓
- (c) The location of known test borings, pits, or core holes. ✓

3. **Additional Maps**

Additional maps and drawings may be required as applicable in accordance with Rule R647-4-105.3.

III. OPERATION PLAN (Rule R647-4-106)

1. Mineral(s) to be mined: Limestone

2. Acreage to be disturbed:

Minesite (operating, storage, disposal areas, etc.):	<u>6.5</u>
Access/haul roads/conveyors:	<u>4.5</u>
Associated on-site processing facilities:	<u>2.0</u>
Total:	<u>13.0</u>

3. Describe methods and procedures to be employed for mining, on-site processing and concurrent reclamation.

Open pit mining is accomplished by borehole drilling and blasting. Limestone is then crushed to specifications. Any topsoil that may exist is pushed into stockpile(s) before mining starts. This topsoil is spread out over the area after mining activities have ceased, followed by disking and seeding.

4. Elevation of groundwater (if known): (Unknown) ft.
5. Thickness of soil material to be stockpiled: 1-6 inches  
Area from which soil material can be salvaged: 4.5 acres  
Volume of soil to be stockpiled: 1200 cu. yds.  
(cross reference with item IV-17)
6. Thickness of overburden: Varies between 0 to 5 ft.
7. Thickness of mineral deposit: 5-12 ft.
8. Volume of refuse, tailings, and processing waste stockpiles: 500 cu. yds.
9. Acreage and capacity of tailings ponds and water storage ponds to be constructed: None acres
10. Describe how topsoil or subsoil material will be removed, stockpiled and protected: None Acre-Feet  
Topsoil will be scraped with dozer and pushed into stockpiles to be used later in reclamation phase.
11. Describe how overburden material will be removed and stockpiled:  
None
12. Describe how tailings, waste rock, rejected materials, etc. will be disposed of:  
If any, these materials will be used as fill.
13. Potentially deleterious materials must be analyzed for toxicity. Describe the nature of any deleterious materials which will be used, encountered, or generated onsite (See Rule R647-1-004):  
None.
- Specify analyses to be conducted on these materials. None

**NOTE:** The Division may stipulate additional analyses.

14. For each tailings pond, sediment pond, or other major drainage control structures, attach design drawings and typical cross-sections.



15. Describe any proposed effluent discharge points (UPDES) and show their location on the map provided under Rule R647-4-105.2. Give the proposed discharge rate and expected water quality. Attach chemical analyses of such discharge if available. None

16. **Vegetation** - The operator is required to return the land to a useful condition and reestablish at least 70 percent of the premining vegetation ground cover.

The ground cover percentage figure is determined by sampling and averaging the vegetation type(s) on the areas to be mined (see Attachment I for suggested sampling methods).

- (a) Vegetation Survey - The following information needs to be completed based upon the vegetation survey:

Sampling method used Line Intercept

Number of plots or transects 2

<u>Ground Cover</u>	<u>Percent</u>
Vegetation (perennial grass, forb and shrub cover)	<u>12</u>
Litter	<u>3</u>
Rock/rock fragments	<u>47</u>
Bare ground	<u>38</u>
	100%

Revegetation Requirement - 70 percent  
of above vegetation figure)

8.4 %

List the four (4) predominant perennial species of vegetation growing on the area.

See Revegetation Species List Prepared by DGM  
8-5-94

- (b) Photographs - The operator may submit photographs (prints) of the site sufficient to show existing vegetation conditions. These photographs should show the general appearance and condition of the area to be affected and may be utilized for comparison upon reclamation of the site. Photographs should be clearly marked as to the location, orientation and the date that the pictures were taken.

17. **Soils** - The plan shall include an order 3 Soil Survey (or similar) and map. This information is needed to determine which soils are suitable for stockpiling for revegetation. This soil data may be available from the local Soil Conservation Service office, or if on public lands, from the land management agency. The map needs to be of such scale that soil types can be accurately determined on the ground (see Attachment I).

- (a) Each soil type to be disturbed needs to be field analyzed for the following:

Depth of soil material	<u>3</u> inches
Volume (for stockpiling)	<u>1200</u> cu. yds.
Texture (field determination)	<u>Clay loam</u>
pH (field determination)	<u>7.6</u>

(cross reference with item IV - 5)

- (b) Where there are problem soil areas (as determined from the field examination) laboratory analysis may be necessary. Soil samples to be sent to the laboratory for analysis need to be about one pint in size, properly labeled, and in plastic bags. Each of the soil horizons on some sites may need to be sampled.

18. **Provide a narrative description of the geology of the area and/or a geologic cross section:** Flagstaff Limestone being gray and blue-gray fresh water limestone.

#### IV. IMPACT ASSESSMENT (Rule R647-4-109)

Please provide a general narrative description identifying potential surface and/or subsurface impacts. Where applicable, this description should include surface and groundwater systems, threatened or endangered species or their critical habitats, existing soil resources for reclamation, slope stability, erosion control, air quality, and public health and safety.

The Cherry Hill Park Quarry will affect the surface and subsurface to depths of 5 to 12 feet depending on the thickness of the high grade limestone. This is not deep enough to encounter any groundwater systems. There is no known threatened or endangered species to our knowledge in this area. There is also no known threat to public health and safety as a result of this limestone operation.



V. RECLAMATION PLAN (Rule R647-4-110)

1. List current land use(s) other than mining: None.

2. List future post-reclamation land-use(s) proposed: UNKNOWN

3. Describe each phase of reclamation of the minesite in detail under the following categories:

(a) Disposal of Trash

Describe how buildings, foundations, trash and other waste materials will be disposed of. All trash and other waste will be hauled away to landfill by contractor. All buildings etc. of a permanent nature will be left in place all of which are pre-existing.

(b) Backfilling and Grading

Describe equipment and methods to be employed, amount of materials to be moved and final disposition of any stockpiled materials. Any depressions or low areas will be filled with waste rock and fines material and then covered with topsoil.

(c) Soil Material Replacement

In order to reestablish the required ground cover, one to two feet (depending on underlying material) of suitable soil material usually has to be redistributed on the areas to be reseeded. If the stockpiled soil isn't sufficient for this, soil borrow areas will need to be located.

How much soil material is planned to be put on the area to be reseeded?

1 to 2 inches

Where will this material come from? Stock piles

How will it be transported and spread? Front end loader and tractors.

(d) Seed Bed Preparation

Describe how the seedbed will be prepared and equipment to be used. Topsoil will be spread then disced then seeded, then raked.

(The Division recommends ripping or disking six inches deep)

(e) Seed Mixture - List the species to be seeded:

<u>Species Name</u>	<u>Seeding Rate (lbs Pure Live Seed/Acre)</u>
<u>See Recommended Revegetation Species List</u>	
<u>Prepared by DOGM 8-5-94</u>	

(The Division recommends seeding 20 lbs./acre of native and introduced adaptable species of grass, forb, and browse seed and will provide a specific species list if requested)

(f) Seeding Method

Describe method of planting the seed. Mechanical Seeder

(The Division recommends planting the seed with a rangeland or farm drill, or if broadcast seeded, harrow or rake the seed 1/4 to 1/2 inch into the soil. Fall is the preferred time to seed)

(g) Fertilization

Describe fertilization method and rate. None

(h) Other Revegetation Procedures

If other reclamation procedures, such as mulching, irrigation, etc., are planned, describe them. None

VI. VARIANCE (Rule R647-4-112)

Any planned deviations from Rule R647-4-007 (Operating Practices), R647-4-108 (Hole



Plugging Requirements), or Rule R647-4-111 (Reclamation Practices) must be identified below.

<u>Rule Number</u>	<u>Title/Category</u>
_____	_____
_____	_____
_____	_____
_____	_____

For each variance requested, attach a narrative statement describing and delineating the area proposed to be affected by the variance, justifying the need for the variance, and discussing alternate methods or measures to be utilized.

VII. **SURETY** (Rule R647-4-113)

A Reclamation surety must be provided to the Division prior to final approval of this application. In calculating this amount, the Division will consider the following major steps:

- 1) Clean-up and removal of structures.
- 2) Backfilling, grading and contouring.
- 3) Soil material redistribution and stabilization.
- 4) Revegetation (preparation, seeding, mulching)

To assist the Division in determining a reasonable surety amount, please attach a reclamation cost estimate which addresses each of the above steps.

VIII. **SIGNATURE REQUIREMENT**

I hereby certify that the foregoing is true and correct.

Signature of Operator/Applicant: 

Name (typed or print): Dan L. Powell

Title/Position (if applicable): Agent - Emery Industrial Resources, Inc.

Date: 11-14-94

**PLEASE NOTE:**

Section 40-8-13(2) of the Mined Land Reclamation Act provides for maintenance of confidentiality concerning certain portions of this report. Please check to see that any information desired to be held confidential is so labeled and included on separate sheets or maps.

Only information relating to the location, size or nature of the deposit may be protected as confidential.

Confidential Information Enclosed: ( ) Yes ( ) No

## Attachment I

### Vegetation Cover Sampling

Vegetation cover sampling determines the amount of ground that is covered by live vegetation. It is divided into four categories which equal 100 percent. They are:

Vegetation - This is the live perennial vegetation. Care should be taken to avoid sampling in disturbed areas that have a large percentage of annual or weedy vegetation, such as cheatgrass and russian thistle.

Litter - This is the dead vegetation on the ground, such as leaf and stem litter.

Rock/rock fragments - This is the rock and rock fragments on the soil surface.

Bare ground - This is the bare soil which is exposed to wind and water erosion.

Cover Sampling - The following methods are acceptable:

#### Ocular Estimation

This method visually estimates the percentage of ground covered in a plot by the four components. Plot size is usually a meter or yard square or a circular plot 36 inches in diameter. Ten to 20 plots should be randomly sampled in each major vegetation type.

#### Line Intercept

Percent ground cover is obtained by stretching a tape measure (usually 100') over the ground and then recording which of the four components is under each foot mark. At least two of these transects should be randomly laid out and measured in each major vegetation type.

### Soil Survey and Sampling Methods

If a SCS or land management agency soil survey is not available, the operator shall delineate all soil types that will be disturbed by mining on a map. Each soil type shall be sampled for its characteristics and inherent properties. Representative sampling locations should have similar geologic parent material, slopes, vegetative communities and aspects. The sampling locations should be representative of the soil type and be identified on the map. Sampling shall be at a minimum of one (1) for each soil type disturbed.

The soil map needs to be of sufficient scale so that each soil type can be accurately located on the ground.



Recommended Revegetation Species List  
for

**Emery Industrial Resources**  
**Cherry Hill Park Mine**  
M/049/021

Prepared by DOGM August 5, 1994

<u>Common Name</u>	<u>Species Name</u>	<u>*Rate lbs/ac (PLS)</u>
Slender Wheatgrass	<i>Agropyron trachycaulum</i>	1.5
Mountain Brome	<i>Bromus marginatus</i>	1.5
Piute Orchard Grass	<i>Dactylis glomerata</i>	1.0
Great Basin Wildrye	<i>Elymus cinereus</i>	1.5
Indian Ricegrass	<i>Oryzopsis hymenoides</i>	1.5
Ladak Alfalfa	<i>Medicago sativa</i>	1.5
Yellow Sweetclover	<i>Melilotus officinalis</i>	0.5
Small Burnet	<i>Sanguisorba minor</i>	1.5
Mountain Penstemon	<i>Penstemon strictus</i>	0.5
Mountain Big Sagebrush	<i>Artemisia tridentata vaseyana</i>	0.1
Rubber Rabbitbrush	<i>Chrysothamnus nauseosus</i>	0.25
Serviceberry	<i>Amelanchier alnifolia</i>	1.0
Blue Elderberry	<i>Sambucus caerulea</i>	1.0
Bitterbrush	<i>Purshia tridentata</i>	1.0
Total		14.35 lbs/ac

\*This the recommended broadcast ratio. If the species are to be drill seeded, reduce the broadcast rate by 1/3.

Recommended Revegetation Species List  
for

Emery Industrial Resources  
Cherry Hill Park Mine  
M/049/021

Prepared by DOGM August 5, 1994

<u>Common Name</u>	<u>Species Name</u>	<u>*Rate lbs/ac (PLS)</u>
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Ladak Alfalfa	<i>Medicago sativa</i>	1.5
Yellow Sweetclover	<i>Melilotus officinalis</i>	0.5
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Blue Elderberry	<i>Sambucus caerulea</i>	1.0
Bitterbrush	<i>Purshia tridentata</i>	1.0
Total		14.35 lbs/ac

\*This the recommended broadcast ratio. If the species are to be drill seeded, reduce the broadcast rate by 1/3.



# EXHIBIT D

M/049/021

**E.I.R**  
**EMERY INDUSTRIAL RESOURCES, INC.**  
967 South 680 West - Payson, Utah 84651  
Phone:(801)465-2455 - Fax:(801)465-2455

**STATE OF UTAH**  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS, AND MINING  
355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
Attention: D. Wayne Hedberg  
Permit Supervisor  
Minerals Regulatory Program

March 1, 1999

Re: Your letter dated 12-9-98 requesting Emery Industrial Resources, Inc., provide to D.O.G.M. addition information that is necessary to complete permitting of Cherry Hill Park Quarry having File #M/049/021, Utah County, Utah..

Dear Mr.Hedberg:

As per your request, Emery Industrial Resources, Inc., submits the following:  
An updated surface facilities and disturbed area map of the entire project area which has been modified and updated from a map submitted to the Division on 1-8-99. On 1-8-99 in a meeting with Mr. Lynn Kunzler it was determined that even with that reclamation that was performed in Fall of 1998, the total acreage of disturbed area still exceeded 5 acres so therefore Emery Industrial Resources, Inc. submits the following information requested as per a Large Mining Operation.

**R647-4-105 - Maps, Drawings & Photographs.**

105.1 Topographic base map, boundaries, pre-act disturbance:

RESPONSE: See map submitted and attached hereto.

105.2 Surface facilities map:

RESPONSE: See map submitted and attached hereto.

105.3 Drawings or Cross Sections (slopes,roads,pads,etc.):

RESPONSE: See Typical Pit Cross Section drawing attached hereto.

3.15 Clearly identify the location of any drainages disturbed during mining and any reclamation plans for those drainages.

RESPONSE: There are no significant drainages within any of those areas





in which mining has occurred or in any of those areas in which mining will occur in the future.

- 3.16 The application fails to identify on the topographic map supplied, the actual location of the project in relationship to the disturbance. The plan also does not contain a final reclaimed surface contour map showing proposed/projected surface elevations upon final reclamation in relation to surrounding topography.

RESPONSE: See map submitted and attached hereto.

- 3.17 Please provide a reclamation treatments map which identifies disturbed areas which will be reclaimed, reclamation treatments, and disturbed areas which will not be reclaimed by means of color coding or cross hatching. This map could also identify areas which are included in a variance request(s). Please provide a separate map of the variance areas if one combined drawing is too cluttered.

RESPONSE: Please note that the whole site disturbed will be treated in the same manner. RE: Same mining procedures and same reclamation procedures. Also see map submitted and attached hereto.

#### **R647-4-106 - Operation Plan**

- 106.2 Type of operations to be conducted:

RESPONSE: A series of 2 1/2" holes are drilled on 9' centers which are each 7' to 10' in depth - the depth of each hole depends on the thickness of limestone locally. This drill hole pattern will cover a blasting area of 300' by 300'. The blasting agent used is Ammonium Nitrate and Dynamite with each hole being loaded with one stick. The typical equipment used in the operation and their tasks are as follows:

<u>Equipment</u>	<u>Tasks Performed</u>
Track Dozer	Clearing topsoil and ripping
Wheel Loader	Clearing and loading of materials
Air Track and Compressor	Drilling bore holes for blasting
Track Back hoe with Breaker	Breaking limestone
Rock Crusher	Crushes limestone
Screening Plant	Screen limestone to size
Lube Truck	Lubrication of equipment
*Fuel Truck	Fueling equipment
*Note: Earth Berms are constructed around any fuel tanks to contain any spillage that may occur if any.	

106.4 Nature of materials mined, waste and estimated tonnages:

RESPONSE: The material that is mined and processed is fresh water limestone from the Flagstaff formation. This limestone deposit is partially covered with a thin layer of topsoil. This thin layer of topsoil is scraped and pushed into a pile and later used in the reclamation of the local area. The approximate annual tonnage of limestone mined is based on what ever contracts may be in place on any given year, however the average annual tonnage requirements for limestone to date is about 25,000 tons. In the mining and processing of the 25,000 tons produced annually an additional 10,000 tons (approximate) is also produced as either a by-product or waste product.

Of this, all by-product material will be sold, and all waste product (usually clay and dirt) are stock piled and used later as fill to slope high walls running along the sides and faces of the quarry.

106.5 Existing soil types, location, amount:

RESPONSE: On November 14, 1994 all soil data that was required was submitted on this date, however may it be noted that all topsoil data that was submitted was collected from expansion areas and was not from any processed materials.

106.6 Plan for protecting & redepositing soils:

RESPONSE: Any and all existing topsoil is scraped and pushed into stockpiles and later spread over the local area for seeding purposes. No cover is placed on existing soil stockpiles due to the short periods of time between stockpiling and spreading which is usually about a two year period which period of time is not a sufficient period of time for any substantial erosion to occur.

106.7 Existing vegetation - species and amount:

RESPONSE: A conflict exists between the percentage of vegetation cover found to exist on the premises by the Division and that percentage found by the applicant. This issue will be resolved in the spring of 1999 by a re-surveying of the area with regards to the vegetation cover present.

106.8 Depth to ground water, extent of overburden, geology. Has any of your drilling activities intercepted any ground water resources to date? To what depth have you drilled the minable ore reserves?

RESPONSE: We are not aware of any seeps or springs in this area - we

have drilled the top 15' and have not encountered any water whatsoever.

106.9 Location & size of ore, waste, tailings, ponds:

RESPONSE: On a typical year a stockpile of waste amounting to approximately 1,000 to 4,000 tons of material is stored in close proximity to active mining operations. At the end of the year this material will either be moved to another primary waste stockpile to be used at a later date for reclamation, or it may be currently used at that time for fill depending on circumstances existing at that time, however irregardless of when all waste material is used it will all be used in the reclamation process as fill (also see 106.4).

**R647-4-107 - Operation Practices.**

107.3 Erosion control & sediment control:

RESPONSE: There are no slopes greater than 3 to 1 for any significant distance. We are leaving site in rough condition to help control any run off if any.

107.4 Deleterious material safely stored or removed:

RESPONSE: Contractors bring in their own fuel in a portable tank as needed and no permanent or full time fuel storage system exists on the premise. Earth Berms are constructed around any fuel tanks to contain any spillage that may occur if any.

107.5 Suitable soils removed & stored:

RESPONSE: All available soil is being stored and used for future reclamation.

107.6 Concurrent reclamation:

RESPONSE: See map submitted and attached hereto.

**R647-4-109 - Impact Assessment.**

109.1 Impacts to surface & ground water systems:

RESPONSE: We are not impacting water quality. Beaver Creek is the closest water source in this area, and any mining that will take place will be at least 400 ft. away.



109.4 Slope stability, erosion control, air quality, safety:

RESPONSE: All high walls will be back filled and sloped, and any and all waste piles will be used as fill material.

**R647-4-110 - Reclamation Plan.**

110.1 Concurrent & post mining land use:

RESPONSE: Post mining uses are cattle grazing and wildlife.

110.2 Roads, high walls, slopes, drainages, pits, etc., reclaimed:

RESPONSE: Private land owner requires that all roads stay in place for property access. It is anticipated that low areas and depressions may exist in several areas but doubts that any of these areas will impound water for any substantial periods of time and expects any water accumulation due to snow pack run off or summer rains to natural drain and /or evaporate in a short period of time. We are using all waste materials to fill high walls. •

110.3 Description of facilities to be left (post mining use):

RESPONSE: The following pre-existing facilities are required by the private land owner to be left in place after post mining use :

1. All roads that access the property.
2. That certain metal building that sets along the North side of the main access road on the premises.
3. That certain loading ramp and chute facilities located on the premises along the South side of the main access road.

110.5 Revegetation planting program:

RESPONSE: The revegetation plan for this project has already been outlined and a recommended seed mix will be used.

**R647-4-111 - Reclamation Practices.**

111.8 All roads & pads reclaimed:

RESPONSE: All waste piles and pads will be reclaimed, however all roads that access the premises will be left in place at the request of the private land owner.

111.9 Dams & impoundments left self draining & stable:

RESPONSE: This issue has already been previously addressed (see 110.2).

111.11 Structures & equipment buried or removed:

RESPONSE: All trash and debris will be hauled off and/or buried on the premises.

111.12 Topsoil redistribution:

RESPONSE: This issue has already been addressed (see 107.5).

**R647-4-112 - Variances.**

RESPONSE: The following variances are hereby requested:

1. Access roads and pre-existing structures left in place at request of private land owner.
2. Top soiling and revegetation standards for pre-existing areas.
3. A variance to leave a water impoundment area just South of the Northerly boundary limits of the mining areas to facilitate snow pack melt and summer rains.

**R647-4-113 - Surety.**

RESPONSE: In 1998 Emery Industrial Resources, Inc., reclaimed five acres on the South end of Cherry Hill Park Limestone Quarry which reclamation costs were as follows:

Total reclamation costs for five acres was \$5,000.00 which is equivalent to \$1000.00 per acre. Of this \$5,000.00, \$3,300.00 was spent on equipment, \$1,200.00 on labor, and \$500.00 for seed.

Using the figure of \$1000.00 per acre for reclamation costs, and it appearing that approximately 10 additional acres have been affected at the Cherry Hill Park Limestone Quarry it appears that a minimum of \$10,000.00 would be needed to reclaim this site. Therefor Emery Industrial Resources, Inc. would be willing to post a bond in the form of either a letter of credit from a reputable lending institution or a certificate of deposit in this amount.

**R647-4-115 - Confidential Information**

RESPONSE: We would appreciate it if all of the material contained in this report was treated as confidential.

I hope this gives you the information that you requested of which is necessary to finalize our Large Mining Permit. If you have any further questions or if I can assist you please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan L. Powell". The signature is fluid and cursive, with the first name "Dan" being more prominent.

Dan L. Powell  
Operations Manager  
Emery Industrial Resources, Inc.



# EXHIBIT E



State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt  
Governor

Kathleen Clarke  
Executive Director

Lowell P. Braxton  
Division Director

1594 West North Temple, Suite 1210  
PO Box 145801  
Salt Lake City, Utah 84114-5801  
801-538-5340  
801-359-3940 (Fax)  
801-538-7223 (TDD)

March 19, 2002

Dan Powell  
Emery Industrial Resources  
P.O. Box 489  
Price, Utah 84501

Re: Informal Meeting Notes, Emery Industrial Resources, Cherry Hill Park Mine, M/049/021, Utah County, Utah

Dear Mr. Powell:

Thank you for meeting with Mary Ann Wright, Lynn Kunzler and me on March 12, 2002, to discuss the status of your large mining operation. The meeting was held at the Division offices, beginning at 1:30 p.m. and ended at 3:00 p.m. The purpose of this meeting was to discuss what was needed to complete the permitting of the Cherry Hill Park Mine. The basis of our discussion concerned your responses to the Division's September 30, 1999 deficiency review.

Each outstanding item of the review was discussed, with the Division providing additional detail as to what was needed to complete each section. You provided the Division with 3 maps (labeled plates 1-3), and a section of language from your lease with E.L. Stokes (landowner) which documents certain pre-existing structures. One major issue that was raised dealt with the final reclamation of the site, and the requested variance to leave certain structures for the post mining land use. You agreed to contact the landowner and ask him to provide us with a letter stating his desire to have these structures remain unreclaimed for his intended post mining use. The landowner would assume full responsibility for their continued use upon termination of your mining activities at this site.

We also discussed scheduling a joint inspection of the site when weather conditions allow, to evaluate your past reclamation efforts, the revegetation success on the topsoil (plant growth medium) stockpiles and weed control issues.

In conclusion of the meeting, you agreed to provide a response to the outstanding deficiencies by March 22, 2002. Two of the issues involve receiving information from outside personnel (the landowner, and obtaining a copy of the Air Quality Approval Order from the construction company). We agreed that if these two items were not available by March 22<sup>nd</sup>, that

EXHIBIT

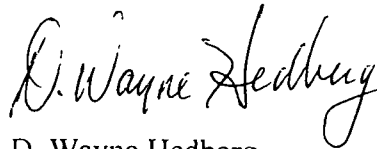
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Page 2  
Dan Powell  
M/049/021  
March 19, 2002

it would be acceptable to provide documentation that these items have been requested, with a commitment to submit them as soon as you received them.

The Division agreed to talk with Utah County about coordinating the final reclamation bonding arrangements for the site. Please don't hesitate to call if you have additional questions, or you believe that we have misrepresented the content of our meeting. I can be reached at (801) 538-5286, or call Lynn Kunzler at (801) 538-5310. Thank you for your cooperation in resolving the remaining permit deficiencies.

Sincerely,

A handwritten signature in black ink that reads "D. Wayne Hedberg". The signature is written in a cursive, flowing style.

D. Wayne Hedberg  
Permit Supervisor  
Minerals Regulatory Program

jb  
cc: Buck Rose, Utah County  
Mary Ann Wright DOGM  
O:\M049 - Utah\M049021\final\3-12-02 meeting.doc



# EXHIBIT F





State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt  
Governor

Kathleen Clarke  
Executive Director

Lowell P. Braxton  
Division Director

1594 West North Temple, Suite 1210

PO Box 145801

Salt Lake City, Utah 84114-5801

801-538-5340

801-359-3940 (Fax)

801-538-7223 (TDD)

May 14, 2002

CERTIFIED RETURN RECEIPT  
7099 3400 0016 8896 3847

Dan Powell  
Emery Industrial Resources  
P.O. Box 489  
Price, Utah 84501

Re: Notice of Non-Compliance and Division Directive to Suspend Mining Activities,  
Emery Industrial Resources, Cherry Hill Park Mine, M/049/021, Utah County, Utah

Dear Mr. Powell:

This letter is sent to formally notify you that your Cherry Hill Park Mine (M/049/021), is not in compliance with sections of the Utah Mined Land Reclamation Act 40-8-1 et seq (Act) and the Minerals Reclamation Program Rules, sections R647-1 through R647-5.

On July 20, 1992, the Division accepted a Notice of Intention to Commence Small Mining Operations for the Cherry Hill mine site. The Division's acceptance letter stated that you would need to file a Notice of Intention to Commence Large Mining Operations and receive Division Approval prior to expanding beyond five acres of surface disturbance.

On November 14, 1994, the Division received a Notice of Intention to Commence Large Mining Operations from Emery Industrial Resources. Several technical reviews have been performed since the initial filing and you have provided subsequent information to address the regulatory requirements. Unfortunately, the application remains technically deficient. Our September 30, 1999, review document outlined the remaining deficiencies. The large mine permit application cannot be approved until these requirements are adequately addressed.

On March 12, 2002, you met with the Associate Director of Mining and Division staff under a Division Directive to discuss the status of this operation and the remaining technical deficiencies. You agreed to provide the required information no later than March 22, 2002. We have received no information or request for an extension to date.



### Location of Non-Compliance

The Cherry Hill Park Mine is located in the East ½ of the Northwest ¼ of the Northwest ¼ of Section 36, Township 11 South, Range 8 East, SLBM, Utah County, Utah.

### Finding of Non-Compliance

1. The Division used a GPS surveying instrument to measure the disturbance associated with the Cherry Hill project area. The survey indicated that this operation has affected approximately 20.6 acres. The Cherry Hill Park Mine has exceeded five acres of surface disturbance, before receiving Division approval of a large mining permit application, as required by Title 40-8-13 of the Mined Land Reclamation Act and Minerals Rule R647-3-113.
2. Emery Industrial Resources, has not posted a form and amount of reclamation surety acceptable to the Division as required under section 40-8-14 of the Act and Rule R647-4-113, before expanding operations beyond the five acre threshold for a small mine.
3. Emery Industrial Resources exceeded five acres of surface disturbance after being formally advised that it is a violation of the Act and Rules to do so without receiving prior Division approval of a large mining permit. The operator may have intentionally evaded the Mined Land Reclamation Act and Minerals Rules in a willful and knowing manner. The operator's actions may be subject to the penalty provisions of section 40-8-9 of the Act.
4. Emery Industrial Resources has failed to provide sufficient technical information to satisfy the regulatory requirements to allow the Division to grant approval of the large mine permit application in a timely manner.

### Mitigation Requirements

1. Emery Industrial Resources ***must submit an acceptable reclamation surety*** to the Division in the amount of \$43,500.00 within thirty (30) days of your receipt of this Notice of Non-Compliance. This surety amount is based upon information provided in your large mine permit application and the current disturbance. A draft reclamation cost estimate is attached. This reclamation surety amount may eventually be increased or decreased to reflect third party reclamation costs when your large mine permit application is finalized and approved. Please contact Joelle Burns at (801) 538-5291 to obtain copies of the appropriate bonding forms.



Page 3  
Dan Powell  
M/049/021  
May 14, 2002


2. Emery Industrial Resources is hereby directed to ***immediately suspend all mining operations and removal of material*** from the Cherry Hill Park Mine until the reclamation surety is received and formally accepted in writing by the Division.
3. Within ten (10) days of your receipt of this Notice, Emery Industrial Resources must provide a written response which addresses the remaining technical deficiencies as outlined in the Division's September 22, 1999 review letter.

**Consequences of Continued Non-Compliance**

1. Emery Industrial Resources' failure to comply with these mitigation requirements within the time frames specified in this Notice will result in the issuance of a formal Notice of Agency Action. The Notice of Agency Action may require the operator to appear at a formal hearing before the Board of Oil, Gas and Mining. Following public notice and Hearing, the Board will issue an abatement or compliance Order which may require: suspension or termination of all mining operations, immediate reclamation of all mining-related disturbances, and/or other lawful requirements as authorized under the Act.

If you wish to appeal this Notice and Directive, you may contact the Division to schedule an informal hearing before the Division Director. Please contact Vickie Southwick, Executive Secretary, at (801) 538-5304, within 10 days of your receipt of this notice, if you choose to arrange an informal hearing. If you have any questions regarding this Notice you may contact me at (801) 538-5306, Wayne Hedberg at (801) 538-5286, or Lynn Kunzler (801) 538-5310.

Sincerely,

  
for Mary Ann Wright,  
Associate Director, Mining

jb

Attachments: draft reclamation cost estimate  
Permit chronology

cc: Buck Rose, Utah County

O:\M049-Utah\M049021-CherryHill\non-compliance\4-29-2002 noncomp.doc

**Supplemental Information – Notice of Non-Compliance**

Emery Industrial Resources  
Cherry Hill Park Mine  
M/049/021

**Permit Chronology**  
(Updated 5-14-2002)

July 8, 1992	Received SMO for Project from operator.
July 20, 1992	Division accepted SMO for Project – no variances.
July 22, 1993	Site inspected, area estimated to be just less than 5 acres.
July 7, 1994	Letter from Division to Dan Powell – asked about status of LMO application for this project – Questioned intention of plans to go to a large mining operation.
July 27, 1994	Site inspection found disturbed area greater than 5 acres (operator had estimated 7 acres, and has posted a reclamation surety with Utah County for 9 acres of disturbance).
August 24, 1994	Letter to operator requiring submittal of LMO within 45 days.
October 7, 1994	Operator provided copy of bonding documents that have been filed with Utah County (9 acres bonded at \$1,600 per acre, total bond is \$14,400.00). Operator also requested an additional 30 days to submit LMO.
October 14, 1994	Division granted 30-day extension.
November 14, 1994	Division received original LMO from the operator.
January 31, 1995	Annual report submitted – identified approximately 8 acres of disturbance.
June 2, 1995	Division sends deficiency review comments of LMO to Emery Industrial.
February 23, 1996	Annual report submitted – identified approximately 12 acres of disturbance.
October 27, 1997	Letter sent to Emery Industrial requested operator to respond within 45 days of the June 2, 1995 review, which is now over two years old.
December 4, 1997	Operator requested an additional 90 days to complete response to the Division's deficiency review, stating that he would need outside help to complete land surveys, soil surveys, etc.
January 12, 1998	Operator's request for an additional 90 days is denied, operator given until February 27, 1998 to submit formal response to the Division's review. A timetable was to be submitted which outlined when information that was not available would be submitted.
February 5, 1998	Annual report submitted – approximately 13 acres disturbed.
February 27, 1998	Received fax from operator (re: response for completion of permitting), which stated that he would reclaim a portion of the site, and a certified copy and an updated map would follow.
December 9, 1998	Division sent letter to Emery Industrial requesting a formal submission of all permitting materials collected to date. The Division never received the certified copy or map. Letter stated that if sufficient acreage had not been reclaimed to reduce the disturbed area to less than five acres, then a complete LMO must be filed with the Division by January 31, 1999.
January 29, 1999	Annual report submitted – approximately 5 acres reclaimed (this would leave 8 acres based on 1998 annual report).
March 3, 1999	Operator submits revised LMO.

September 22, 1999	Site inspected – GPS survey of the disturbed area shows 20.6 acres disturbed (19.7 acres which will require reclamation and 0.9 acres that will remain). The 5 acres reported as being reclaimed was 4.3 acres (as determined with the GPS) and that reclamation had not been completed (topsoil had not been replaced and no evidence that the area had been seeded).
September 30, 1999	Division completes second deficiency review of LMO (3/3/99 submittal).
February 22, 2000	Annual report submitted – identified only 8 acres of disturbance plus 5 acres that had been reclaimed.
January 23, 2001	Sent CRR letter stating we have not received a response to our 9/30/99 review comments to date. Another copy of comments sent w/letter. Please respond w/in 30 days from receipt of this letter. Operator received letter on January 29, 2001.
January 29, 2001	Annual report submitted – identified 8 acres of disturbance.
May 7, 2001	Operator claimed letter DOGM sent 1/23/2001 was sent to the wrong address (went to Stephen Powell instead of Dan Powell). Hand delivered a copy of the letter to Dan Powell today and gave him until the end of June, 2001 to respond.
June 29, 2001	Letter received from the operator requesting a meeting to discuss the review and a timeframe to make a submission.
July 30, 2001	Meeting held to discuss DOGM 9/30/99 review letter. Operator granted another 45 days to submit information @9/14/2001.
August 16, 2001	Sent letter documenting meeting held on 7/30/2001 and commitments made by operator. Operator agreed to have response to DOGM w/in 45 days from meeting date or by 9/17/2001. At the meeting it was discussed that it is likely that the operation will be transferred to Utah Rock, Inc. once the permit is finalized.
September 13, 2001	Sent letter stating site inspected 9/6/2001 showed signs of Musk Thistle infestation. Requested operator control this noxious weed now, which will make revegetation easier upon final reclamation. DOGM rules do not require this, but the Utah Noxious Weed Act does.
September ?, 2001	Phone call requesting another two week extension to respond. Granted to 10/1/2001.
January 22, 2002	Sent CRR Division Directive. It has been over 100 days since Division extended date to 10/1/2001 to submit response to 9/30/99 review. Must contact Associate Director w/in 10 days to schedule a meeting to discuss options to remedy situation.
January 31, 2002	Phone call to Dan Powell regarding 1/22/2002 CRR letter. He only occasionally gets to Price to pick up mail. (He lives in Utah County). The letter was faxed to him today; therefore, operator received DOGM 1/22/02 CRR letter today! Response due by 2/11/02.
February 11, 2002	Phone call from operator - wants meeting scheduled for 2/25/02.
February 19, 2002	Phone call from operator - requested meeting to be rescheduled for early March. Operator and Division agree on March 12, 2002.
February 27, 2002	Received 2001 annual report. No activity since 1998. Current plans call for possible mining during spring/summer with follow up reclamation as needed.
March 12, 2002	Meeting with Mr. Powell, Associate Director and minerals staff at DOGM. Went



Page 3  
Dan Powell  
M/049/021  
May 14, 2002

over operator's proposed responses to outstanding technical deficiencies. Mr. Powell agrees to provide formal response to DOGM no later than March 22, 2002.

April 3, 2002 Phone call to Dan Powell requesting status of technical response. Mr. Powell states difficult time acquiring all requested information. Taxes due, need couple more weeks to provide the formal submittal.

May 14, 2002 Notice of Non-compliance and Division Directive sent to operator ordering suspension of operations, posting of reclamation bond and submittal of remaining permit deficiencies.

# RECLAMATION SURETY ESTIMATE

Emery Industrial Resources, Inc.

Cherry Hill Park Mine

M/049/021

Prepared by Utah State Division of Oil, Gas & Mining

last revision  
filename M049-021.WB2  
Utah County

04/23/02

-Access road, building, loading ramp, facilities not included in this estimate (0.85 acres)  
-1.5 acres of the site will not receive topsoil  
-4.2 acres has been regraded (not seeded)

-A depth of 6 inches of growth medium to be placed over entire site, because of insufficient amounts of soil, amended reject fines will also be used to complete reclamation.

Note: actual unit costs may vary according to site conditions last unit cost update 2-Aug-00

-Amount of disturbed area which will receive reclamation treatments = 19.75 acres

-Estimated total disturbed area for this mine = 20.6 acres

Activity	Quantity	Units	\$/unit	\$	Note
Safety gates, signs, etc. (mtls & installation)	1	sum	200	200	(1)
Regrading disturbed areas (1 ft depth)	15.55	acre	502	7806	(7)
Ripping pit floors, stockpiles & compacted areas	19.75	acre	234	4622	(9)
Highwalls reduction (1800' X 10' @ 3:1)	3000	CY	0.5	1500	
Topsoil replacement - dozer	4900	CY	0.5	2450	(12)
Growth medium replacement - dozer	9800	CY	0.5	4900	(13)
Composted manure (5 ton/acre)	6	acre	150	900	(00)
Composted manure (10 ton/acre)	13.75	acre	300	4125	(00)
Broadcast seeding	19.75	acre	225	4444	(00)
General site cleanup & trash removal	10	acre	50	500	(00)
Equipment mobilization	1	equip	1000	1000	(00)
Reclamation supervision	5	days	386	1930	(15)
10% Contingency		Subtotal		34376	
				3438	
Escalate for 5 years at 2.82% per year		Subtotal		37814	
				5641	
		Total		43455	
Rounded surety amount in year 2007 \$				43500	
Average cost per disturber acre =				2109	

## Note

- (1) DOGM lump sum assumed
- (7) Means 2000 & Blue Book 3Q/00: Cat D8N, U, mtl 2550 lb/CY, 50 ft push, 1 ft depth
- (9) Means 2000 & Blue Book 3Q/00: Cat D8N, U, multi shank rippers, speed 1.0 mph
- (12) Means 2000 & Blue Book 3Q/00: Cat D8N, U, mtl 2550 lb/CY, 100 ft push
- (13) Means 2000 & Blue Book 3Q/00: Cat 627F P-P, mtl 2550 lb/CY, 2,000 ft haul one-way, grade +/- 4%,
- (00) DOGM general estimate - manure \$16/ton delivered, \$14 ton/acre spreading
- (00) DOGM general estimate - broadcast seeding
- (00) DOGM general estimate - site cleanup & trash removal
- (00) DOGM general estimate - equipment mobilization
- (15) Means 2000, 01300-700-0180, project manager, minimum \$1,930/wk



# EXHIBIT G





State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

1594 West North Temple, Suite 1210

PO Box 145801

Salt Lake City, Utah 84114-5801

(801) 538-5340 telephone

(801) 359-3940 fax

(801) 538-7223 TTY

www.nr.utah.gov

Michael O. Leavitt  
Governor

Robert L. Morgan  
Executive Director

Lowell P. Braxton  
Division Director

RECEIVED

JAN 17 2003

DIV. OF OIL, GAS & MINING

msw  
1/17/03

January 9, 2003

HAND DELIVERED

via Utah County Sheriff's Office

Dan Powell

Emery Industrial Resources

262 South 800 West

Payson, Utah 84651

Re: Proposed Agency Action, Emery Industrial Resources, Cherry Hill Park Mine, M/049/021, Utah County, Utah

Dear Mr. Powell:

This letter is sent to formally notify you that the Notice of Non-Compliance issued by the Division on May 14, 2002 for your Cherry Hill Park Mine (M/049/021), *has not* been completely mitigated in a timely manner. Accordingly, the Division hereby notifies Emery Industrial Resources ("EIR") of its intention to take the Agency Action set forth in this notice:

**Location of Mine Site**

The Cherry Hill Park Mine is located in the East ½ of the Northwest ¼ of the Northwest ¼ of Section 36, Township 11 South, Range 8 East, SLBM, Utah County, Utah.

**Unfulfilled Mitigation Requirements**

Emery Industrial Resources has failed to provide an acceptable form of reclamation surety to the Division in the amount of \$43,500.00 within thirty (30) days of its receipt of the May 14, 2002 Notice of Non-Compliance. Under section 40-8-14 of the Utah Mined Land Reclamation Act and Rule R647-4-113, an operator must provide adequate reclamation surety before expanding operations beyond the five (5) acre threshold for a small mine.

The Division has allowed EIR additional time beyond the timeframe specified in our May 14<sup>th</sup> Non-Compliance Notice, due to apparent difficulties you were having in securing the reclamation surety. Over the past several months, you have verbally advised Division staff on several occasions, that you would be delivering the required reclamation surety to our office within the next few days. The surety remains outstanding to date.



**Proposed Agency Action**

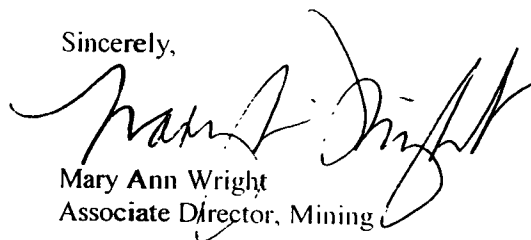
The Division hereby provides notice to EIR of its decision to *deny* approval of the Notice of Intention to Commence Large Mining Operations (originally submitted November 14, 1994), and all subsequent modifications and refinements made to the plan since that date. The Division also notifies EIR of its intention to withdraw acceptance of the Notice of Intention to Commence Small Mining Operations, submitted July 8, 1992, and to seek an order from the Board of Oil, Gas & Mining requiring the operator to commence reclamation of existing mining-related disturbances according to a schedule determined by the Division.

In accordance with the requirements of the *Utah Mined Land Reclamation Act, Title 40-8-16(3)*: *Approval of a notice of intention may not be refused, withheld, nor withdrawn by the Division until the operator, who holds or has applied for such approval, has had an opportunity to request a hearing before the Board, present evidence, cross-examine, and participate fully in the proceedings. Based on the record of the hearing, the board will issue an order concerning the refusal, withholding, or withdrawal of the notice of intention. If no hearing is requested, the Division may refuse, withhold, or withdraw approval of a notice of intention.*

Therefore, you are hereby advised of your right to appeal this Agency Action and request a formal hearing on the matter. In order to do so, you must file a written request to appeal within 10 days of your receipt of this notice. Your failure to file such a request may preclude you from further participation, appeal, or judicial review with regard to this action. If you do not appeal this proposed Agency Action, the Division's decision will become final and we will seek an Order from the Board of Oil, Gas and Mining, as described above. Please contact Mary Potter, Administrative Secretary, at (801) 538-5327, if you wish to exercise your right to appeal this decision before the Board of Oil, Gas and Mining. She can provide you with appropriate guidance and assistance in preparing your formal Hearing request.

If you choose to resolve this matter *without* a formal hearing, you may schedule an informal conference with the Division Director. To do so, please contact Vicki Southwick, Executive Secretary, at (801) 538-5304, within 10 days of your receipt of this notice. If you have any questions regarding this notice you may contact me at (801) 538-5306, Wayne Hedberg at (801) 538-5286, or Lynn Kunzler at (801) 538-5310.

Sincerely,



Mary Ann Wright  
Associate Director, Mining

ph  
Attachments: Supplemental information  
cc. Buck Rose, Utah County  
Steve Alder, Attorney General's Office  
C:\M049-Utah\M049021-Cherry Hill\Non Compliance\11-13-2002 agencyaction.doc

## **Supplemental Information – Proposed Agency Action**

Emery Industrial Resources  
Cherry Hill Park Mine  
M/049/021

### Background Information

#### **Summary of Non-Compliance**

On May 14, 2002, the Division issued a non-compliance for the Cherry Hill Park Mine, citing:

1. The site had expanded beyond the 5-acre limit of a small mining operation, to 20.6 acres, after the operator had been notified that he must first file a Notice of Intention to conduct Large Mining Operations with the Division and have Division **approval** before proceeding beyond 5 acres.
2. The operator had not posted an adequate form or amount of reclamation surety as required by law; and
3. The operator had not provided the technical information required to approve a Large Mining Notice of Intention.

#### **Summary of Mitigation Required**

1. Emery Industrial Resources was to submit an acceptable reclamation surety to the Division in the amount of \$43,500.00 within 30 days.
2. Emery Industrial Resources was to suspend all mining operations and removal of materials from the Cherry Hill Park Mine until the reclamation surety is received and formally accepted by the Division.
3. Emery Industrial Resources was to submit a written response to the outstanding technical deficiencies within 10 days.

#### **Status of Mitigation Work**

1. Emery Industrial Resources **has not submitted** an acceptable reclamation surety to the Division in the amount of \$43,500.00, as required. The operator has provided numerous verbal promises to provide this surety, but has failed to follow through to date.
2. Mining operations at the Cherry Hill Park Mine have been suspended by the operator. *This satisfies mitigation requirement #2.*
3. The Division received a written response to the outstanding deficiencies on June 6, 2002. *This satisfies mitigation requirement #3*



RETURN OF SERVICE

STATE OF UTAH / COUNTY UTAH } S.S. SHERIFF'S OFFICE

DOCKET NUMBER: CV-03-0182

SERVED: POWELL, DAN

DEFENDANT

DATE RECEIVED: 1/13/2003

DATE SERVED: 1/14/2003

PROCESS: NOTICE

TYPE OF SERVICE: OTHER

LEFT AT COMPANY OR CORP. WITH: POWELL, DAN / SELF

SERVICE ADDRESS: 262 S 800 WEST

CITY: PAYSON

STATE: UT

I FURTHER CERTIFY THAT AT THE TIME OF SERVICE, ON COPY SERVED,  
I ENDORSED THE DATE, SIGNED MY NAME AND OFFICIAL TITLE THERETO.

SHERIFF'S FEES

TOTAL

0.00

JAMES O. TRACY, SHERIFF OF UTAH COUNTY, STATE OF UTAH

I CERTIFY THAT THE FORGOING IS TRUE AND CORRECT  
AND THAT THIS CERTIFICATE IS EXECUTED ON

DATE 1/14/2003 BY

Whit Tate  
(DEPUTY SHERIFF) WHITNIE TATE

# EXHIBIT H





State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt  
Governor

Robert L. Morgan  
Executive Director

Lowell P. Braxton  
Division Director

1594 West North Temple, Suite 1210

PO Box 145801

Salt Lake City, Utah 84114-5801

(801) 538-5340 telephone

(801) 359-3940 fax

(801) 538-7223 TTY

www.nr.utah.gov

February 20, 2003

CERTIFIED RETURN RECEIPT  
7099 3400 0016 8894 6086

Dan Powell  
Emery Industrial Resources, Inc.  
262 South 800 West  
Payson, Utah 846451

Re: Findings of Fact, Conclusions of Law and Order for the Emery Industrial Resources, Inc.  
Cherry Hill Park Mine, M/49/021, Utah County, Utah

Dear Mr. Powell:

On January 28, 2003 an Informal Conference was held after request by Dan Powell, Emery Industrial Resources, Inc.(EIRI), for the Cherry Hill Park Mine (the mine), Oil, Gas and Mining file number M/49/021. As a result of a review of all pertinent data and facts, including those presented in the Informal Conference, the following shall constitute the Findings of Fact, Conclusions of Law and Order in this matter:

### Background

By telephone on January-16, 2003, EIRI requested an Informal Conference in response to the Division's January 9, 2003 Proposed Agency Action, and the Division's May 4, 2002 Notice of Non-Compliance. The Division's proposed action found that EIRI was operating an unpermitted, unbonded large mining operations at the Cherry Hill Park Mine dating to July, 1994



### **The Informal Conference**

On January 28, 2003 an Informal Conference was conducted in Suite 1210, Conference Room A of the Department of Natural Resources Building. Lowell Braxton served as Conference Officer. A record of the conference was made by Kerry J. Sorensen, RPR, and is available for purchase from Thacker & Company, (801) 983-2180.

The Division was represented by Mary Ann Wright, Associate Director of Mining, Wayne Hedberg, Permit Supervisor, Minerals Regulatory Program, and Lynn Kunzler Sr. Reclamation Specialist, Minerals Regulatory Program. Susan White and Steve Alder attended. EIRI was represented by Dan Powell.

Wayne Hedberg and Lynn Kunzler reviewed the permit chronology causing the May 14, 2002 Division Notice of Non-Compliance, and culminating in the service of the January 9, 2003 Proposed Notice of Agency Action. This chronology is attached as Addendum A.

Mr. Powell stated he was not prepared to rebut the chronology, but opined that the Division's assertion that certain of his permit applications contained "outstanding technical difficulties" was unfounded.

Mr. Powell indicated that the Division's responses to his permit submissions were untimely, and suggested certain correspondence by the Division had been sent to an incorrect address, while further asserting that this address was that of a competitor. (The Division maintained the address had been provided by Mr. Powell.)

Mr. Powell indicated that the single unresolved issue was posting of a bond and cited his recent attempts to acquire reclamation surety for the mine. A letter to the Division dated Jan 27, 2003 signed by Cindi D. Parmley, Cornerstone Insurance Agency, Inc.(attached hereto as addendum B) was submitted as a current attempt by EIRI to acquire reclamation surety for the mine.

Mr. Powell suggested that the Division's acreage calculations for mining disturbance (the basis for the mandated surety) may not have adequately reflected disturbances by others prior to his occupation of the site.

### Findings of Fact and Conclusions

1. UCA 40-8 requires, prior to commencement of mining operations other than small mining operations, the operator provide reclamation surety in the form and amount contemplated at UCA 40-8.
2. Mining disturbances greater than 5 acres are large mining operations.
3. Since 1994, EIRI has conducted large mining operations at the mine without an approved permit, and without the mandated reclamation surety.
4. A Notice of Agency Action is the appropriate mechanism for the Minerals Regulatory Program to use when initiating formal and informal adjudicative proceedings.
5. The Proposed Notice of Agency Action dated January 9, 2003, was appropriately served.
6. The request for the Informal Conference was timely.
7. The position established in 1994 by the Division and stated in the Proposed Notice of Agency Action asserting an exceedance of disturbed area allowable under the Small Mining regulations at the mine was not factually reversed at the informal conference.
8. EIRI has exceeded the allowable disturbances under the Small Mining Regulations for the mine. The operator is required to file true and correct maps and other information related to mining related disturbances to facilitate calculation of reclamation surety. A Large Mining Permit is required.
9. Disturbances under Large Mining Operations regulations require a reclamation surety.
10. The Division has calculated a reclamation bond of \$43,500 for the mine as contemplated at UCA 40-8-14 (2).
11. Mr. Powell's understanding of Division permitting and bonding requirements by virtue of the exposure to and correspondence with the Division as evidenced in Addendum A makes him knowledgeable of the requirements of the Minerals Regulatory Program.
12. On January 28, 2003, Mr. Powell provided a letter signed by Cindi Parmley, Cornerstone Insurance Agency indicating Emery Industrial Resources, Inc. had applied for a surety bond for the mine in the amount of \$43,500.



## Order

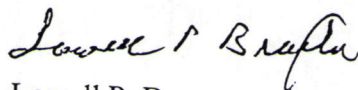
The Proposed Agency Action found at the top of p. 2 of the 1-9-03 Proposed Agency Action letter is modified as follows:

1. Due to lack of the mandated reclamation surety, EIRI shall immediately cease all mining operations at the Cherry Hill Park Mine until written approval to commence mining operations has been received from the Division.
2. The Division shall inspect, document, and report the condition of mining related disturbances at the Cherry Hill Park Mine, and file the report with the Associate Director of Mining within 10 calender days (weather permitting) of the issuance of this order.
3. If within 30 days of issuance of this order EIRI has not provided to the Division an acceptable form and amount of surety to address current mining related disturbances at the Cherry Hill Park Mine, the Division will initiate an agency action before the Board of Oil, Gas and Mining asking for immediate reclamation of EIRI's mining related disturbances, and for payment of civil penalties as contemplated at UCA 40-8-9.

## Remarks

Within 30 days of your receipt of this Order, you or your agent may make a written appeal of this Order to the Board of Oil, Gas and Mining. Such appeal should be addressed to the Secretary, Board of Oil, Gas and Mining at the address shown above.

Sincerely,



Lowell P. Braxton  
Conference Officer

vs

Enclosures

cc: Mary Ann. Wright  
Wayne. Hedberg  
Steve. Alder

P:\GROUPS\MINERALS\WP\M049-Utah\M049021-CherryHill\final\Dan Powell Informal Conferencewpd.wpd



## Emery Industrial Resources

### Cherry Hill Park Mine M/049/021

#### Permit Chronology (Updated January 2003)

July 8, 1992	DOGM received Small Mining Operations Notice for Cherry Hill Project from operator.
July 20, 1992	Division accepted SMO for Cherry Hill Project – no variances.
July 22, 1993	Site inspected, area estimated to be just less than 5 acres.
July 7, 1994	Letter from Division to Dan Powell – asked about status of LMO application for this project – Questioned his intention of plans to go to a large mining operation.
July 27, 1994	Site inspection found disturbed area greater than 5 acres. Operator had estimated 7 acres, and has posted a reclamation surety with Utah County for 9 acres of disturbance.
July 27, 1994	Site disturbance map received by the Division from operator.
August 24, 1994	Letter to operator requiring submittal of LMO within 45 days.
October 7, 1994	Operator provided copy of bonding documents to DOGM that have been filed with Utah County (9 acres bonded at \$1,600 per acre, total bond is \$14,400.00 – LOC made out to Utah Co. Board of Commissioners). Operator also requested an additional 30 days to submit LMO.
October 14, 1994	Division granted 30-day extension.
November 14, 1994	Division received original LMO from the operator.
January 31, 1995	Annual report submitted – identified approximately 8 acres of disturbance.
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February 5, 1998	Annual report submitted – approximately 13 acres disturbed.
February 27, 1998	Received fax from operator (re: response for completion of permitting), which stated that he would reclaim a portion of the site, and a certified copy and an updated map would follow.
December 9, 1998	Division sent letter to Emery Industrial requesting a formal submission of all permitting materials collected to date. The Division never received the certified copy or map. Letter stated that if sufficient acreage had not been reclaimed to reduce the disturbed area to less than five acres, then a complete LMO must be filed with the Division by January 31, 1999.
January 29, 1999	Annual report submitted – approximately 5 acres reclaimed (this would leave 8 acres based on 1998 annual report).
March 3, 1999	Operator submits revised LMO.
September 22, 1999	Site inspected – GPS survey of the disturbed area shows 20.6 acres disturbed (19.7 acres which will require reclamation, and 0.9 acres that will remain unreclaimed). The 5 acres reported as being reclaimed was 4.3 acres (as determined with the GPS) and reclamation had not been completed (topsoil had not been replaced and no evidence that the area had been seeded).
September 30, 1999	Division completes second deficiency review of LMO (3/3/99 submittal).
February 22, 2000	Annual report submitted – identified only 8 acres of disturbance plus 5 acres that had been reclaimed.
January 23, 2001	Sent CRR letter stating we have not received a response to our 9/30/99 review comments to date. Another copy of comments sent w/letter. Please respond w/in 30 days from receipt of this letter. Operator received letter on January 29, 2001.
January 29, 2001	Annual report submitted – identified 8 acres of disturbance.
May 7, 2001	Operator came into office, claimed letter DOGM sent 1/23/2001 was sent to the wrong address (went to Stephen Powell instead of Dan Powell). Hand delivered a copy of the letter to Dan Powell today and gave him until the end of June, 2001 to respond.
June 29, 2001	Letter received from the operator requesting a meeting to discuss the review and a timeframe to make a submission.
July 9, 2001	Letter to operator establish July 30, 2001 date for meeting at the Division.
July 30, 2001	Meeting held at Division to discuss DOGM 9/30/99 review letter. Operator granted another 45 days to submit information @9/14/2001.
August 16, 2001	Sent letter documenting meeting held on 7/30/2001 and commitments made by operator. Operator agreed to have response to DOGM w/in 45 days from meeting

date, or by 9/17/2001. At the meeting it was discussed that it is likely that the operation will be transferred to Utah Rock, Inc. once the permit is finalized.

September 6, 2001	Site inspection performed, noted Musk Thistle weed problem
September 13, 2001	Sent letter stating site inspected 9/6/2001 showed signs of Musk Thistle infestation. Requested operator control this noxious weed now, which will make revegetation easier upon final reclamation. DOGM rules do not require this, but the Utah Noxious Weed Act does.
September 17, 2001	Phone call requesting another two week extension to respond. Granted to 10/1/2001.
January 22, 2002	Sent CRR Division Directive. It has been over 100 days since Division extended date to 10/1/2001 to submit response to 9/30/99 review. Must contact Associate Director w/in 10 days to schedule a meeting to discuss options to remedy situation.
January 31, 2002	Phone call to Dan Powell regarding 1/22/2002 CRR letter. He only occasionally gets to Price to pick up mail (he lives in Utah County). The letter was faxed to him today; therefore, operator received DOGM 1/22/02 CRR letter today! Response due by 2/11/02.
February 11, 2002	Phone call from operator - wants meeting scheduled for 2/25/02.
February 19, 2002	Phone call from operator - requested meeting to be rescheduled for early March. Operator and Division agree on March 12, 2002.
February 27, 2002	Received 2001 annual report. States no activity since 1998. Current plans call for possible mining during spring/summer with follow up reclamation as needed.
March 12, 2002	Meeting with Mr. Powell, Associate Director and minerals staff at DOGM. Went over operator's proposed responses to outstanding technical deficiencies. Mr. Powell agrees to provide formal response to DOGM no later than March 22, 2002.
March 19, 2002	Letter sent to operator outlining agreements reached during March 12 <sup>th</sup> meeting.
April 3, 2002	Phone call to Dan Powell requesting status of technical response. Mr. Powell states difficult time acquiring all requested information. Taxes due, needs couple more weeks to provide the formal submittal.
May 14, 2002	Notice of Non-compliance and Division Directive faxed and certified mail to operator ordering suspension of operations, posting of reclamation bond and submittal of remaining permit deficiencies. 30-day deadline established from receipt of letter to post surety.
June 11, 2002	DOGM received response to our 9-30-1999 technical review letter.
June 26, 2002	Site inspected, site inactive at time of inspection. Operator failed to show up for scheduled inspection to discuss topsoiling concerns and reclamation performed.



- July – Dec. 2002 Several phone calls and personal contacts with the operator to discuss where the reclamation surety was. Operator would state that he is working on it and should have it to us within the next week to ten days; or some calls stated it would be delivered within the week. Each contact was not officially documented.
- January 9, 2003 Sent proposed Agency Action letter to be delivered by Utah County Sheriff's Office, for unfulfilled mitigation requirements pertaining to DOGM's Notice of Noncompliance – Required \$43,500 surety to be posted by June 28, 2002. The proposed agency action is to deny approval of the LMO Notice of Intent, withdraw acceptance of SMO submitted 7/8/1992 and seek an Order from the Board requiring operator to commence reclamation of existing mining related disturbances on a schedule to be determined by DOGM. If operator wishes to appeal this action formally before the Board, or informally with the Division's Director, he must notify the Division within 10 days. Failure to file such a request may preclude operator from further participation, appeals or judicial reviews. If this is not appealed, the proposed Agency Action will become final and the Division will seek an Order from the Board as described above.
- January 14, 2003 Utah County Sheriff served operator with the 1-9-2003 letter. DOGM received notification from the sheriff on 1-17-2003.
- January 16, 2003 Operator called the Division to set up an informal conference before the Division Director – conference scheduled for January 28, 2003 at 10:00 a.m.

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January 27, 2003

State of Utah  
Division of Oil, Gas and Mining  
1594 West North Temple, Suite 1210  
Salt Lake City, UT 84114-5801

To Whom it May Concern:

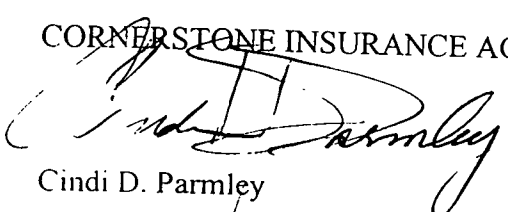
Please note that Dan Powell of Emery Industrial Resources, Inc. in Payson, Utah is currently applying and awaiting approval of the \$43,500 surety bond required for Cherry Hill Park, (your file No.: M/49/0021).

We have submitted the application to several approved Surety companies and will be able to give him an answer regarding eligibility in a few days.

Should you have any questions, please give me a call.

Sincerely,

CORNERSTONE INSURANCE AGENCY, INC.

  
Cindi D. Parmley

*Hand delivered by D Powell  
at the informal conference for M/49/0021 1/28/03*

**RECEIVED**  
**JAN 28 2003**  
DIV. OF OIL, GAS & MINING



**CORNERSTONE**  
INSURANCE AGENCY INC.

Ph. 801-377-8400 • 1-800-572-0166 • Fx: 801-377-1476  
531 East 770 North • Orem Utah 84097

# EXHIBIT I





State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

1594 West North Temple, Suite 1210

PO Box 145801

Salt Lake City, Utah 84114-5801

(801) 538-5340 telephone

(801) 359-3940 fax

(801) 538-7223 TTY

www.nr.utah.gov

Michael O. Leavitt  
Governor

Robert L. Morgan  
Executive Director

Lowell P. Braxton  
Division Director

March 20, 2003

CERTIFIED RETURN RECEIPT

7099 3400 0016 8896 2598

Dan Powell  
Emery Industrial Resources, Inc.  
262 South 800 West  
Payson, Utah 84651

Re: Modified Findings of Fact, Timeframe Extension to Provide Reclamation Surety, Emery Industrial Resources, Inc. Cherry Hill Park Mine, M/49/021, Utah County, Utah

Dear Mr. Powell:

On February 20, 2003, a letter was sent to you outlining the Findings of Fact. Conclusions of Law and Order, in response to a January 28, 2003, Informal Conference that was held in response to our January 9, 2003, Proposed Agency Action for the Cherry Hill Park Mine. As a result of that conference, an Order was issued that required, among other things, that Emery Industrial Resources provide a \$43,500 reclamation surety to this office within 30 days, or by March 20, 2003.

On March 19, 2003, you called the Division seeking a time extension to post the reclamation surety for the Cherry Hill Park Mine. The Division has considered your request and hereby grants an additional two (2) week extension until April 3, 2003 to provide the required surety. If you are unable to post the surety within this timeframe, the Division will proceed with the issuance of a Notice of Agency Action for a formal hearing before the Board of Oil, Gas and Mining to resolve this matter.

If you have questions or concerns regarding this extension, please contact Mary Ann Wright, or Wayne Hedberg at (801)538-5306 and 538-5286, respectively.

Sincerely,

Lowell P. Braxton  
Conference Officer

jb

Enclosures

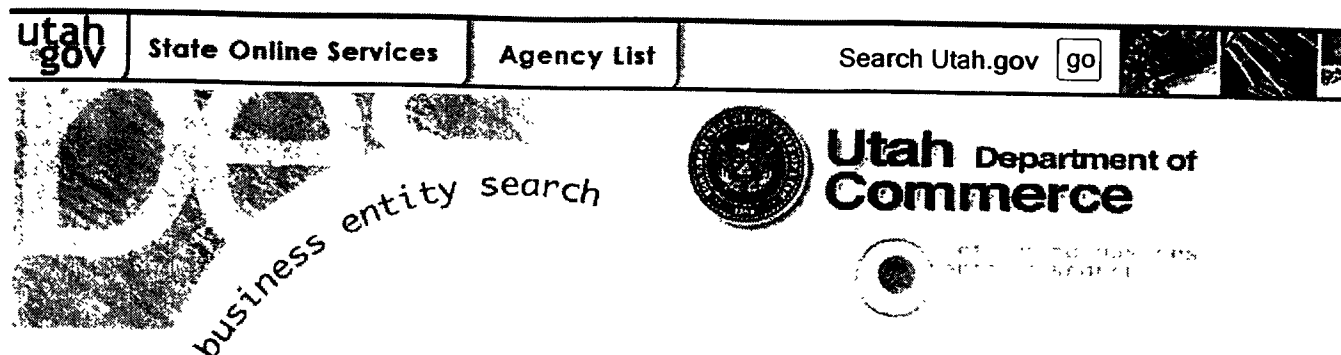
cc: Mary Ann. Wright  
Wayne. Hedberg  
Steve. Alder

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Utah!  
Where ideas connect



# EXHIBIT J



Name	Type	City
EMERY INDUSTRIAL RESOURCES INCORPORATED	Corporation	PAYSON UT

**Business Name:** EMERY INDUSTRIAL RESOURCES INCORPORATED

**Entity Number:** 1120264-0142

**Registration Date:** 12/22/1992 ✓

**State of Origin:** UT

**Address**

967 S 680 W

PAYSON UT 84651

**Status**

**Status:** Active

**Status Description:** Annual Report

**This Status Date:** 12/23/2002

**Last Renewed:** 1/28/2003

**License Type:** Corporation - Domestic - Profit

**Delinquent Date:** 12/22/2003

(Note: If your renewal is not received within 60 days of delinquency date your filing will expire.)

**Registered Agent**

**Registered Agent:** DAN L POWELL

**Address Line 1:** 967 S 680 W

**Address Line 2:**

**City:** PAYSON

**State:** UT

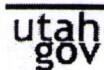
**Zip:** 84651

**Additional Information**

<b>NAICS Title:</b>	5413-Architectural, Engineering, and Rel
<b>Stock Class 1 Amount:</b>	0000100000
<b>Stock Class 1 Type:</b>	COMMON
<b>Stock Class 2 Amount:</b>	0000000000
<b>Stock Class 3 Amount:</b>	0000000000
<b>Stock Class 4 Amount:</b>	0000000000

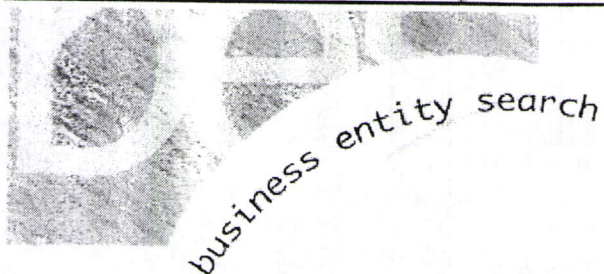






State Online Services

Agency List

Search Utah.gov **Utah** Department of  
**Commerce**return to business  
entity search

Name	Type	City
EMERY INDUSTRIAL RESOURCES INCORPORATED	Corporation	PAYSON UT

**Principal Information**

Position	Name	Address
Director	PRESTON A POWELL	967 S 680 W PAYSON UT 84651
Director	DAN L. POWELL	967 S 680 W PAYSON UT 84651
President	DAN L. POWELL	967 S 680 W PAYSON UT 84651
Registered Agent	DAN L. POWELL	967 S 680 W PAYSON UT 84651
Secretary	DAN L. POWELL	967 S 680 W PAYSON UT 84651
Treasurer	PRESTON A POWELL	967 S 680 W PAYSON UT 84651
Vice President	PRESTON A POWELL	967 S 680 W PAYSON UT 84651

Additional Principals on file at Division of Corporations: N

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